

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

CHERYL K. MARPLE,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-06-1182-D
)	
MICHAEL J. ASTRUE, Commissioner,)	
Social Security Administration,)	
)	
Defendant.)	

ORDER

This matter comes before the Court upon Plaintiff's Application for Attorney's Fees Under the Equal Access to Justice Act ("EAJA") [Doc. No. 25]. Plaintiff seeks an award of attorney's fees in the amount of \$13,106.25 and expenses of \$397.94 under 28 U.S.C. § 2412(a) and (d); the fee amount represents her attorney's recorded time of 58.25 hours at a rate of \$225 per hour.

Defendant has filed a timely response in opposition to the Application. Defendant objects to the amount of fees as excessive because Plaintiff's attorney claims an hourly rate that exceeds the statutory maximum and includes in his records 1.6 hours of allegedly unnecessary time. Defendant also objects to any award of expenses because the items sought are recoverable under 28 U.S.C. § 1920 upon the timely filing of a bill of costs.

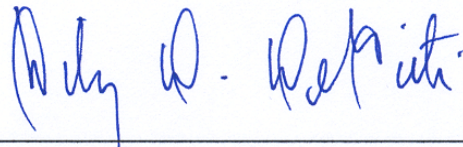
In reply, Plaintiff admits counsel's mistake in requesting his usual hourly rate rather than the current prevailing EAJA rate for this region; she thus agrees to reduce the claimed rate from \$225 to \$169 per hour. Plaintiff also agrees to reduce the attorney's claimed time from 58.25 to 56.65 hours and to withdraw the request for an award of expenses. As modified, Plaintiff's Application thus seeks an award of attorney's fees in the amount of \$9,573.85.¹

¹ Due to an apparent miscalculation, Plaintiff states her modified request is \$9,845.00.

Upon consideration of Plaintiff's amended motion and review of the case record, the Court finds that the Commissioner's position was not substantially justified and that Plaintiff is entitled to an award of attorney's fees under 28 U.S.C. § 2412(d). The Court further finds the amount of fees requested is reasonable.

Therefore, Plaintiff's Application [Doc. No. 25], as amended, is GRANTED. The Court orders an award of attorney's fees to Plaintiff pursuant to the Equal Access to Justice Act in the amount of \$9,573.85. Should an additional fee award later be authorized under 42 U.S.C. § 406(b), then Plaintiff's attorney shall refund to Plaintiff the smaller amount as required by *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 27th day of May, 2008.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE